

Patrick L. Tanner (Utah Bar No. 7319)
BURBIDGE & WHITE, LLC
15 West South Temple, Suite 950
Salt Lake City, Utah 84101
Telephone: (801) 359-7000
Facsimile: (801) 236-5319
ptanner@burbidgewhite.com

Jay Jerde (WSB# 6-2773) (pro hac vice)
Deputy Attorney General
James Kaste (WSB# 6-3244) (pro hac vice)
Senior Assistant Attorney General
123 State Capitol
Cheyenne, WY 82002
Telephone: (307) 777-6946
Facsimile: (307) 777-3542
jay.jerde@wyo.gov
james.kaste@wyo.gov

Attorneys for *Amicus Curiae* State of Wyoming

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

UINTAH COUNTY, UTAH, et al.,)	
)	
Plaintiffs,)	
	)	Case No. 2:10-cv-970-DVB-BCW
v.	)	(lead)
)	
KEN SALAZAR, Secretary, U.S.	)	Judge: Dee Benson
Department of the Interior, et al.,	)	Magistrate Judge: Brooke C. Wells
)	
Defendants.)	
	)	STATE OF WYOMING'S
SOUTHERN UTAH WILDERNESS	)	MEMORANDUM OF LAW IN
ALLIANCE, et al.,	)	OPPOSITION TO MOTIONS TO
	)	DISMISS
Intervenor-Defendants.)	
)	

STATE OF UTAH,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 2:11-cv-391-DVB
	)	(Consolidated)
KEN SALAZAR, Secretary, U.S.)	
Department of the Interior, et al.,)	
)	
Defendants,)	
)	
SOUTHERN UTAH WILDERNESS)	
ALLIANCE, et al.,)	
)	
Intervenor-Defendants.)	

The State of Wyoming, *amicus curiae*, hereby opposes Defendants’ and Defendant-Intervenors’ second round of motions to dismiss. (Dkts. 158, 162).

The State of Wyoming previously filed its Memorandum of Law in Opposition to Motions to Dismiss (Dkt. 84), which addressed the Defendants’ and Defendant-Intervenors’ attempt to have the Plaintiffs’ prior complaints dismissed. (Dkts. 66-70). The underlying basis for the State of Wyoming’s legal analysis remains valid. The Federal Land Policy Management Act (FLPMA), 43 U.S.C. §§ 1701-1787, does not authorize the Secretary of the United States Department of the Interior or the United States Bureau of Land Management to manage public lands to protect wilderness characteristics by creating *de facto* wilderness study areas outside of the specific process set forth in the statutes. (Dkt. 84 at 5-20).

The State of Wyoming's prior brief discussed Secretarial Order No. 3310. (*Id.* at 2). Since then, Congress has defunded and prevented the Secretary from implementing the Order. (*See* Dkts. 152 at ¶¶ 73, 189; 153 at ¶114); *see also* Continuing Appropriations Act, 2014, Pub. L. No. 113-46, § 104, 127 Stat. 558, 559 (Oct. 17, 2013) (prohibiting use of funds during fiscal year 2014 for programs previously defunded during fiscal year 2013). Undeterred, the Secretary issued Instruction Memorandum No. 2011-154 and the BLM issued Manuals 6310 and 6320, which were designed to achieve what the Secretary and the BLM are prohibited from doing under Secretarial Order No. 3310. (*See* Dkts. 152 at ¶ 190; 153 at ¶¶ 116-118). At their core these policies attempt to allow the Secretary and the BLM to create *de facto* wilderness study areas. (*See* Dkts. 152 at ¶ 77; 153 at ¶¶ 124-141). However, no matter what they call the document or the land, FLPMA does not authorize them to manage public lands in this manner. (Dkt. 84).

Accordingly, the State of Wyoming's legal analysis previously submitted applies equally to the Defendants' and Defendant-Intervenors' motions to dismiss the Plaintiffs' amended complaints. Therefore, the State of Wyoming will rely on its previous submission to the Court and will not unnecessarily repeat its arguments. (*Id.*).

WHEREFORE, the State of Wyoming respectfully requests that this Court deny Defendants' and Defendant-Intervenors' motions to dismiss.

SUBMITTED this 7th day of November, 2013.

Attorneys for *Amicus Curiae*
State of Wyoming

/s/ Patrick L. Tanner
Patrick L. Tanner (Utah Bar No. 7319)
BURBIDGE & WHITE, LLC
15 West South Temple, Suite 950
Salt Lake City, Utah 84101
Telephone: (801) 359-7000
Facsimile: (801) 236-5319
PTanner@burbidgewhite.com

Jay Jerde (WSB# 6-2773)
Deputy Attorney General
jay.jerde@wyo.gov

James Kaste (WSB# 6-3244)
Senior Assistant Attorney General
123 State Capitol
Cheyenne, WY 82002
(307) 777-6946
(307) 777-3542 Facsimile
james.kaste@wyo.gov